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RUEHKO/AMEMBASSY TOKYO 7442
RUEHCN/AMCONSUL CHENGDU 1055
RUEHGZ/AMCONSUL GUANGZHOU 8990
RUEHHK/AMCONSUL HONG KONG 5905
RUESLE/AMCONSUL SHANGHAI 8387
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UNCLAS SECTION 01 OF 07 TAIPEI 000562

SIPDIS

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STATE FOR EAP/RSP/TC AND EB/IPE LACROSSE, PASS USTR FOR
JCHOE-GROVES, WINTERS, WINELAND, AND STRATFORD, USDOC FOR
4431/ITA/MAC/AP/OPB/TAIWAN/MBMORGAN AND JBOGOR, DOC PASS
USPTO JURBAN AND LOC STEPP

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SUBJECT: AIT/T VIEWS ON SPECIAL 301 REVIEW 2006

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- [1](#)B. 05 TAIPEI 4927
- [1](#)C. 05 TAIPEI 4549
- [1](#)D. 05 TAIPEI 4330
- [1](#)E. 05 TAIPEI 4059
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- [1](#)J. 05 TAIPEI 2909
- [1](#)K. 05 TAIPEI 2143

[1](#)1. Summary: The environment for Intellectual Property protection in Taiwan continues to improve as key sectors of society embrace the reality that Taiwan's economic prosperity is increasingly dependent on innovation. Taiwan authorities have continued effective enforcement actions targeted at optical media piracy, counterfeit pharmaceuticals and fake branded goods. Efforts to combat internet-related piracy continue and show promise in spite of increasing use of the internet to market infringing goods. Judicial decisions are beginning to reflect a better understanding of intellectual property law and Taiwan's Intellectual Property Office has proven itself committed to providing training to law enforcement officials and judges, lobby for needed legislative action, and cooperate with industry to find creative solutions to IPR problems where legislation is lacking.

[1](#)2. But Taiwan's IPR protection regime still has some large holes that continue to provide opportunities for IP pirates. Although Taiwan's Ministry of Economic Affairs is a strong supporter of IPR protection, that dedication is not uniformly in evidence throughout the government. Taiwan's Ministry of Education (MOE) has not embraced government promises to create a positive environment for intellectual property. MOE's unwillingness to take any actions to address illegal downloading and copying on university campuses fosters a disregard for IP among Taiwan's future leaders and is cause for serious concern. Taiwan's Department of Health has displayed a similar unwillingness to take the lead in efforts to clamp down on the flow of counterfeit pharmaceuticals into Taiwan. The decision by the Ministry of the Interior to transfer 18% of the IPR Police unit to other public security duties suggests the Taiwan government is beginning to view IPR protection as a lower priority. Finally, Taiwan's unique

political status makes needed cooperation with regional law enforcement agencies to combat cross-border trade in counterfeit goods extremely difficult. In view of the continuing lack of response by some Taiwan government agencies to the problems of intellectual property violations, AIT/T recommends Taiwan remain on the Special 301 Watch List for 2006. End Summary

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Optical Media Piracy in Taiwan

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13. Since 2003, Taiwan has made great progress in controlling optical media piracy. The passage of the Optical Media Law in 2001 required optical disk (OD) manufacturing plants to be licensed and mandated the use of Source Identification (SID) Codes, giving Taiwan law enforcement the legal framework to crack down on counterfeiters. Creation of enforcement task forces, including the Joint Optical Disk Enforcement (JODE) Task Force and the Integrated Enforcement Task Force (IETF), had a significant effect on manufacturing and retail sales of pirated optical media. Trade associations report the number of stalls in night markets, traditionally a primary channel for counterfeit media, has fallen from over 300 to less than 50 island-wide, a number that has remained steady for the past two years.

14. As Taiwan authorities have effectively shut down counterfeiting activities in optical media plants and retail markets, counterfeiters have moved to using DVD burners installed in private residences. Counterfeiters reportedly take orders by phone or internet, burn copies on demand and use express mail services to make deliveries. Taiwan law

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enforcement and trade associations believe that the number of Chinese websites offering counterfeit media is growing and note a rise in shipments of small quantities of counterfeit optical media, primarily movies, from China. Local trade associations in Taiwan believe the optical media piracy rate is falling, albeit slowly for movies and software. The International Federation of Phonographic Industries (IFPI) reports a dramatic drop in counterfeit CDs from 36% to 26%, but attributes this to the growing ease and popularity of digital content downloading.

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Enforcement Action by Police and Special Task Forces

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15. Taiwan law enforcement had a number of successes in 2005. Taiwan's Joint Optical Disk Enforcement (JODE) Task Force conducted 1193 inspections of optical disk manufacturers in 2005, up slightly from 2004. While no violations were found, seven OD manufacturing plants did close. The IPR Police conducted 5000 raids, filed 1428 cases and made 1593 arrests for IPR infringement, compared to 1219 cases and 1052 arrests in 2004. This improved result may reflect the change in late 2004 of the IPR Police from an ad-hoc task force to an official arm of the National Police.

16. The National Police also used regular units to investigate IPR infringement cases. 2005 figures show a significant increase in the number of cases filed and suspects arrested. Cases increased by 10% to 4648 and arrests increased 21% to 5245 in 2005. Trademark cases increased dramatically, reflecting additional resources directed towards investigation of sales of counterfeit branded and luxury goods, primarily smuggled from China. National Police seizures of counterfeit optical media decreased compared to the same period in 2004. Officials attribute this drop to the growing popularity of downloading digital content from the internet.

17. Taiwan Customs reported the same number of seizures of IPR-infringing imports in 2004 and 2005, but noted an

increase in seizures of copyright-infringing optical media. Taiwan Customs also seized 11 incoming shipments and one outbound shipment of counterfeit PC boards for Nintendo game players. While changes in the copyright law in 2004 allowed for ex officio inspections by Taiwan Customs, the law requires rightsholders to verify within a short period that the seized materials are counterfeit. The Motion Picture Association has assigned personnel to Chiang Kai Shek International Airport to verify the authenticity of suspect parcels but Customs reports that some rightsholders are not responsive to requests to verify suspect trademark violations.

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Computer Software Piracy, No Progress

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18. The Business Software Association believes the software piracy rate in Taiwan has remained consistent over the past three years at 43%, in spite of some reports that suggest that business software is increasingly being downloaded and exchanged by P2P users. Anecdotal evidence suggests that most servers offering cracked software are based in China. Although the Taiwan government has made efforts to ensure the use of only registered and legal software in government offices, AIT is aware of cases where Taiwan government offices are alleged to have purchased IP-infringing products or allowed illegal downloading of copyrighted software. In one instance, the Ministry of Defense purchased copyright-infringing copies of software from an unlicensed vendor. Another case alleges users under the Ministry of Education illegally downloaded over 30,000 copies of its software.

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Book Piracy Remains an Unquantified Problem

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19. Representatives of the Taiwan Book Publishers Association (TBPA) believe the level of police cooperation in combating book piracy is acceptable, but complain that judges are reluctant to issue search warrants. TBPA alleges that some on-campus copyshops are actively copying textbooks but do not face sanctions from university administrators. Confusion over the definition of "fair-use" reportedly encourages professors and students to routinely copy all or large parts of a copyrighted work. Police are reluctant to conduct enforcement activities on campus after a 2002 raid on Cheng Gong University in Tainan led to wide-spread student protests. TBPA complains that the Ministry of Education has been unwilling to establish a channel for dialogue on this issue and has not taken effective steps to curb illegal copying on campus.

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Trademark Piracy a Growing Threat

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110. As optical media piracy rates appear to be dropping, investigations and seizures of counterfeit branded goods in Taiwan is increasing. Police say this is because more resources have been deployed to crack down on sale of counterfeit bags and clothing. In 2005 police filed 2244 cases involving trademark infringement, up 21% from 2004, and arrested 2627 suspects, up 20% from 2004. Taiwan Customs reported that the number of seizures of counterfeit branded goods fell from 208 in 2004 to 174 in 2005. However, Taiwan Customs impounded 2,393,323 items in 2005, compared to just 63,264 items in 2004. Counterfeit cigarettes accounted for most of these items, but substantial quantities of counterfeit cosmetics, leather goods (including bags), PC boards, medicines, and clothes were also seized. In addition, Taiwan Customs made three seizures of export goods totaling 700 items, including one shipment of counterfeit

Ford auto parts.

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Pharmaceutical Piracy Wide-Spread, DOH Not Engaged
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¶11. A targeted effort by Taiwan's Ministry of Justice in 2005 led to a number of seizures of counterfeit pharmaceuticals island-wide. A few examples: In May, police arrested a nurse's aide in Taoyuan and charged her with selling counterfeit weight-loss drugs over the internet. The accused reported she bought the counterfeit Reductil from someone she had met on-line and received shipments of counterfeit drugs from Vietnam. In December 2005, Taiwan's IPR Police busted a ring selling counterfeit pharmaceuticals on the internet, arresting two and seizing 5000 counterfeit pills of Reductil, Viagra, Cialis, and other drugs. After several months of investigation, four police units raided a warehouse in the Taipei suburb of Xizhi, seizing 550,000 counterfeit pills of Reductil, Stillnox, Viagra, Cialis, Zantac, Tamiflu, and others. Police estimated the street value of the seizure as over USD 9 million. Two people were arrested. Large quantities of high-quality packaging materials, instruction pamphlets and labels were also found. The quality of the counterfeit products was extremely high. Police believe the drugs were smuggled from China in bulk, then packaged and distributed to pharmacies, medicine shops, and night market vendors all over Taiwan.

¶12. The majority of counterfeit pharmaceutical products appear to be smuggled into Taiwan, usually from China, before being packaged and distributed locally. However, according to a statement from one of the defendants in the large case above, they had recently begun importing chemicals from China with an eye to producing some counterfeit drugs in Taiwan. Packaging is reportedly produced in Taiwan and has become so sophisticated that industry representatives are sometimes unable to determine the fakes from a visual inspection.

¶13. The Taiwan Department of Health (DOH) has not made efforts to stop counterfeiting of pharmaceutical products a priority. DOH has no enforcement arm and relies on the Ministry of Justice to lead anti-counterfeiting efforts. In

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2003, DOH established an interagency committee that meets biannually to share information and provide training on recognizing counterfeit pharmaceuticals. DOH has made no effort to cooperate with TIPO to take action against counterfeit pharmaceuticals, nor does it play any official role in pharmacy accreditation. DOH is focused on consumer safety and because there have been no reports of adverse reactions from counterfeit pharmaceuticals, combating counterfeits is not a priority for DOH.

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Changes in IPR Laws in 2006
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¶14. Taiwan's Legislative Yuan passed amendments in 2005 that would allow trademark registrations to claim multiple priority rights. This gives TIPO the legal basis to recognize trademark registration from other countries and set priority dates based on the first trademark registration. Taiwan also passed legislation to establish a patent attorney system and provide for specialized patent attorney licensing. In addition, TIPO began negotiations with Internet Service Providers (ISPs) and digital content providers to devise an ISP Code of Conduct for intellectual property protection. While not legally binding, the proposed Code of Conduct would spell out agreed upon measures that ISPs and content providers could take when intellectual property infringing items are offered for sale or trade over the internet. ISPs have been reluctant to agree to specific measures, although negotiations continue. Property rights associations are considering whether to propose the amendment of appropriate

laws as a means to encourage ISPs to reach a negotiated Code.

¶15. On January 1, 2006, Taiwan's Ministry of Foreign Affairs officially abolished its Anti-counterfeiting Committee. The committee was established in 1981, but its duties had been assumed by TIPO after the creation of that body in 1999. Since that time, the ACC had become a liaison body within TIPO without permanent staff or budget. After extensive consultation with rightsholders groups and interested parties (including the U.S. Department of State) TIPO officially disbanded the ACC. The extensive consultations demonstrate the willingness of TIPO officials to engage local and international stakeholders and are a positive indication of Taiwan's willingness to work with the international community on IP protection.

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P2P Cases - One Step Back, Two Forward

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¶16. In 2005, Taiwan's Courts issued two conflicting rulings in cases brought against Peer to Peer (P2P) service providers. In June, EZPeer was found not guilty of copyright violations after the Shilin District Court found that EZPeer did not illegally reproduce or transmit copyrighted materials. The Court ruled that Taiwan law did not prohibit the use of P2P services, but implied that users could be liable for copyright violations. Recording industry association IFPI has appealed the decision. In September, the Taipei District Court found Kuro and its management guilty of copyright violations, fining the company USD 93,000 and sentencing three senior managers to up to three years in prison. A Kuro user was also sentenced for downloading 900 copyrighted songs from Kuro and sentenced to four months (commutable to a fine of approximately USD 1500.) The Taipei Court found Kuro's advertisements and web banners encouraged users to violate copyrights. The Court was also influenced by Kuro's staff admitting to uploading thousands of songs to the Kuro server at the direction of Kuro management. Kuro has appealed this ruling.

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Data Protection Approved, Still Waiting for Regulations

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¶17. Amendments to Taiwan's Pharmaceutical Law in January 2005 provided pharmaceutical companies with five years of

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data protection for new drugs. New products must be registered in Taiwan within three years of release in an advanced country market (A10 countries.) Implementing regulations have been drafted and circulated widely among innovative pharmaceutical companies and generic producers. While these regulations have not yet been officially adopted, DOH officials have assured manufacturers that products registered after the February 2005 promulgation of the law will be able to benefit from the data protection provisions. DOH expects the regulations to be officially adopted no later than June 2006.

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2005 Training Efforts

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¶18. TIPO and Taiwan Customs organized training sessions for judges, prosecutors and enforcement officials throughout the year, often in cooperation with rightsholders. Nintendo held three training sessions for approximately 60 Taiwan Customs officials in March and August 2005 to explain how to identify counterfeit Nintendo hardware and game cartridges. TIPO conducts regular training sessions for prosecutors and new judges on IPR regulations and laws. Additional workshops for 50 judges and patent examiners on Identifying Patent Infringements took place in August 2005 and 157 police took

part in seminars on Inspection and Prevention of Counterfeiting on the Internet in September. Also in September 2005, AIT and TIPO hosted a seminar attended by 88 judges, prosecutors and law enforcement personnel on Combating Internet Piracy. Speakers included representatives from industry associations (MPA, BSA, IFPI, and PhRMA), the U.S. Department of Justice, the U.S. Patent and Trademark Office, The Bronx District Attorney's Office, TIPO and the IPR Police. TIPO regularly sends its staff to training sessions conducted by the USPTO in Washington.

¶19. A regional IPR Seminar held in Hong Kong in September 2005 illustrated the difficulty Taiwan law enforcement has in interacting with regional counterparts. AmConGen Hong Kong originally invited law enforcement representatives from across East Asia to participate in a seminar designed to improve regional efforts to combat internet piracy. However, Hong Kong authorities subsequently refused visa requests for Taiwan experts and made it known that Taiwan invitees with valid visas would be refused entry. Hong Kong's refusal to issue visas was presumably in response to PRC concerns about Taiwan participation in this regional cooperative event. Taiwan is not eligible to join WIPO and is not a signatory to the WIPO Copyright Treaty or the WIPO Performances and Phonograms Treaty.

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IPR Court Coming in 2007
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¶20. After much discussion by legal experts and the Judicial Yuan, an IP Court Planning Committee was established in September 2005. The Committee agreed to include both criminal and civil IPR cases in the mandate of the IP Court. However, current draft legislation would require district courts to handle first instance criminal cases involving copyright violations. Under this proposal, the IP Court would hear criminal copyright cases only on appeal. An IP Court Organic Act and an IP Cases Trial Act have been proposed to Taiwan's Legislative Yuan and TIPO expects these bills to be considered in the current legislative session. Training for prospective IP Court judges will begin in March 2005, with the first session of training expected to conclude in July 2005. Subsequent training sessions for IP Court judges will be scheduled after July.

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Areas of Concern for 2006
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¶21. Over the past three years, TIPO has proven itself to be a reliable partner in efforts to combat intellectual property violations. AIT has worked closely with TIPO leadership to

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conduct effective training for legal officials, lobby for needed changes in IPR law and regulation, and exchange views with rightsholders and law enforcement officials. TIPO officials have been in the forefront of efforts to meet new challenges to IP protection as the internet increasingly abets counterfeiters. However, TIPO's influence over other government bodies is limited and not all sectors of Taiwan's government or society are fully supportive of efforts to combat intellectual property violations.

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MOE Needs to Take Responsibility
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¶22. The Ministry of Education (MOE) has been particularly reluctant to embrace protection of intellectual property. Rightsholders believe IPR infringement on MOE-administered Internet Service Provider TAnet is rampant. TBPA believes illegal copying of textbooks at on-campus copyshops is also pervasive. A cultural sympathy in Taiwan for students likely contributes to MOE's decision to "turn a blind eye" to this

illegal behavior. However, as a government agency, MOE has the responsibility to abide by laws prohibiting illegal downloading or copying of copyrighted material. MOE has not taken steps to do so and has been unwilling to meet with rightsholders groups or with TIPO to discuss steps that can be taken to address these problems.

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Improve Cooperation in Battle on Counterfeit Pharma

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¶23. The Department of Health is also reluctant to take concrete measures to address what by most estimates is a serious counterfeit pharmaceutical problem in Taiwan. Despite the considerable efforts of Taiwan law enforcement officials, industry estimates that as much as 25% of pharmaceuticals sold in Taiwan are counterfeit or illegal parallel imports, a figure DOH accepts. For popular "lifestyle" drugs, counterfeits could be as high as 40% of the market. Recent police raids suggest counterfeiters are now targeting public fears of Avian Flu to distribute counterfeit Tamiflu. DOH has biannual meetings with law enforcement and pharmaceutical associations but sees counterfeiting as a public health issue, rather than an IPR issue. DOH has refused to include TIPO in its biannual counterfeiting working group meetings. The absence of confirmed cases of adverse reactions to counterfeit drugs leads DOH to make this problem a low priority. Although penalties for manufacture, distribution or sale of counterfeit drugs were increased by amendments to the pharmaceutical law in 2004, DOH was unable to provide any examples of cases where pharmacists had been arrested or lost licenses for selling counterfeit products. DOH has only a limited role in issuing pharmaceutical licenses and has no power to audit or revoke licenses once issued.

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Fully Staff IPR Police

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¶24. The legal establishment of the IPR Police in 2004 was a victory for rightsholders and a large factor in Taiwan's removal from the Special 301 Priority Watch List in 2005. The force was established at 220 persons and the view at the time was that the size of the force could grow as additional funding became available. Instead, budget cuts and reassignment of personnel to "public security" efforts have cut the size of the IPR Police from 220 to 180 officers. The IPR Police is not the only special police unit to lose staff, the Environment and Forestry Units have reportedly been eliminated. But the reduction in staff sends the wrong message to rightsholders and IPR infringers. In addition, the IPR Police face shortages in internet expertise and the latest computer equipment. In spite of these shortcomings, the IPR Police has done exceptional work in 2005. Fully staffed, trained and equipped, this unit could do even more.

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Opportunities for Regional Cooperation Needed

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¶25. Taiwan's unique political status can make opportunities for cooperation with international counterparts rare. Although Taiwan officials have participated in regional meetings under the auspices of APEC or as NGO members, direct communication that could usefully address cross-border IP infringement is difficult. As Taiwan's law enforcement efforts to crack down on production of counterfeit products have been more successful, manufacturers have moved off-shore, often to China. This creates a structural difficulty for Taiwan officials who have limited communication with their counterparts across the Strait. Efforts to facilitate that communication have had little success. Taiwan Customs reports they have virtually no

communications with their counterparts from China and Hong Kong Customs officials recently refused to meet with Taiwan Customs officials. As more and more counterfeit products are exported and smuggled out of China, the inability of Taiwan to participate in regional information sharing networks will make combating IP piracy in Taiwan increasingly difficult.

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Future Training Opportunities and Objectives

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¶26. As Taiwan moves to tackle the problems posed by internet piracy, U.S.-sponsored training that addresses internet investigations and prosecutions and includes experienced U.S. prosecutors as speakers would be particularly welcome. Taiwan is also in the process of establishing an IPR Court. Seminars by U.S. judges with experience in hearing IPR cases would be helpful as Taiwan trains its own judges for duty on this new Court. Efforts to assist Taiwan to build regional information sharing networks among law enforcement officials are badly needed to assist Taiwan to combat an increasing torrent of counterfeit goods coming from China and other countries. Initiatives directed towards Ministry of Education and Department of Health officials would also be useful in creating a better understanding of the importance of IPR protection in education and health. Finally, advance notice of USPTO and other training opportunities would be helpful in ensuring maximum Taiwan participation at these events. Currently, announcements of training opportunities are made a few months in advance, this does not provide sufficient time for some nominees to seek approval and obtain funding. Earlier notification of yearly training programs would facilitate greater Taiwan attendance at these important events.

KEEGAN